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REPORTS

NOTES OF THE WEEK

The Right of the Press to Report

When three men were sent to prison and another was fined at Swindon magistrates' court for an assault causing bodily harm it was stated that the man assaulted was a press photographer to whom one of the defendants said "You are the chap who put my name in the paper. You can take that back to your editor." The defendant's solicitor said his client had a grievance against a reporter but not against the prosecutor, and thought that the reporter had no business to report a previous case in which he was involved.

As the chairman of the magistrates observed, freedom in this country means that every court is open to the public including the press. The press is entitled to report public proceedings, and a reporter would be failing in his duty if he did not report cases of public interest. This may sometimes involve annoyance to those concerned in the proceedings, but so long as the reporter and the editor are accurate as to facts and moderate in expression they are not open to criticism and are certainly not to be visited with violence. The disgrace attending publicity is without doubt a strong deterrent against the commission of offences.

Imprisonment of Person Under 21 Years Old

By s. 17 (2) of the Criminal Justice Act, 1948, no court is to impose imprisonment on a person under 21 years old without first considering alternative methods of treatment, and before deciding the question the court is to obtain and consider information about the circumstances and in particular to consider information about the offender's character and his physical and mental condition.

The Criminal Justice (Scotland) Act, 1949, s. 18 (2), is in similar terms and requires a court to obtain information "from a probation officer or otherwise."

The Scotsman of December 19 reported the case of *R.* v. *Cummings* in which a defendant aged 20 appealed against a sentence of imprisonment in respect of a road traffic offence. At the hearing in the Justiciary Appeal Court the advocate for the appellant said that in cases involving persons under 21 the Court should obtain from a probation officer or otherwise, information concerning the accused's circumstances. All that had been done in this case was that his solicitor had pointed out that his client was only 20 years old. The Lord Justice-Clerk (Lord Thomson) said he was satisfied that there had been an irregularity in procedure and, for that reason the Court would substitute a fine of £50 for the sentence of imprisonment.

After-Care: Prisons and Borstals

The annual report of the Council of the Central After-Care Association for the year 1956* is an official document of more than ordinary interest, and the general reader, even if he does not care to examine statistics, may find it well worth his attention. Public interest in what goes on in the prisons and borstals and what happens to those who are released from them, continues to increase, and this report contains much valuable information about the way in which the authorities are dealing with their problems.

Sir Lionel Fox, chairman of the Prison Commission, and chairman of the Association, has provided a brief introduction to the separate reports, and he has certain comments to offer. Referring to the prisoners who, in accordance with s. 29 of the Prison Act, 1952, are required to report to the After-Care Association, Sir Lionel says again that experience has in no way eased the concern at the amount of work and public expense involved in the maintenance of this system and of the distaste of the Association for carrying out a police function which is unrelated to and tends to impair the normal relationship with prisoners.

Sir Lionel stresses the value of pre-release training courses as a preface to after-care, and the Reverend Martin Pinker, in his report as Director of Men's After-Care, strikes the same note. The figures relating to discharges from Leyhill and Wakefield are good, but he does not ask for the work to be judged by these figures alone. There

*H.M. Stationery Office, 2*s.* net.

is, for instance, the question of the persistent offender who eventually lands at Dartmoor and who might well be the despair of after-care workers, but the astonishing fact is not that 34·1 *per cent.* of those discharged in 1954 had been re-convicted by the end of 1956, but that 65·9 *per cent.* had remained free from further encounter with the law.

Corrective training does not seem to give such satisfactory results as were hoped for, but it has to be remembered that it deals with a difficult type of prisoner, and there are some outstanding successes. We have previously referred to the Bristol Hostel experiment and to the grant of home leave to selected prisoners. Both these innovations have met with success.

As Mr. Pinker says: "If after-care is to succeed it has to be a very personal matter. We are encouraged by the many who starting on their licence with suspicion, end up as friends . . . It is important to note that in the overall picture we are able to report more successes than failures and this makes the work worthwhile."

Borstal Cases

Mr. F. C. Foster, who reports on the work of the borstal division, is quite free from complacency, although the results of the work of his division need not give rise to any despondency. He sees the necessity for reporting upon the less satisfactory aspects of the work in order to give a complete picture, and then to try to ascertain the causes of failure. He puts his finger on what is perhaps a weak spot and he writes: "We still tend to think that if we call ourselves 'case workers' or 'trained social workers,' by some alchemy our work will become effective and of value." As he indicates it is no use being a mere observer recording facts—what is needed is influence.

A most encouraging feature of the report is a tribute to the co-operation of the War Office and the ready help of commanding officers in dealing with borstal boys who go into the Army as National Servicemen. These boys may elect to come under a scheme whereby the commanding officer is informed that a boy has come from borstal—this, of course, in confidence. Officers have shown a keen desire to take part in this scheme and by so doing to help such boys in their personal problems. It is gratifying to learn that 65 *per cent.* of boys discharged to the Army as National Servicemen have volunteered under this scheme.

Women's and Girls' Division

In reporting upon the after-care of women and girls, Miss H. L. Long expresses the opinion that better results might be obtained in the case of women subject to s. 29 of the Prison Act, 1952, if they were on a licence and subject to statutory after-care. It is a fact, she says, that those who have kept in touch voluntarily have not offended again and attribute this to the help, not necessarily financial, they have received from the Association. The present system whereby they report to the After-Care Association, but have to apply to another source for financial assistance, she considers neither helpful nor economical.

There are some brief, but illuminating accounts of some individual cases which show how difficult it must be to help some of them. We hear much about unwise parents and their responsibility for young offenders. Here is something in pleasant contrast. "A well educated girl from an excellent home at 19 served a term of imprisonment. An attempt by certain newspapers to make a martyr of her was frustrated by the sensible co-operation of her parents with us. She has done extremely well since her discharge and it is unlikely that she will offend again."

Magistrates' Courts Act, 1957—A Point of Procedure

At 121 J.P.N. 785 we referred to a practice of asking defendants to acknowledge to the police the receipt of a summons and we said we should be grateful for information on the point. A correspondent to whom we are grateful has written at some length on the point and has explained that the advantage of the practice, from the police point of view, is to enable them to decide whether they will be in a position to claim that the summons has been duly served and to know, therefore, whether to arrange for any necessary witnesses to attend. The police difficulties on this point have been aggravated by the provision in r. 3 of the Magistrates' Courts Rules, 1957, which brings summonses left at a defendant's place of abode within para. (2) of r. 76 of the 1952 Rules. Our correspondent states that if the acknowledgement of receipt of the summons goes to the court there is bound to be some delay before the information reaches the police, which adds, he says, to their difficulties in dealing with the witnesses. He points out that r. 76 (2) does not require that "the letter or other communication" on which a court may rely in deciding that the summons has come to the defendant's knowledge shall be one sent to the court.

In the course of his letter our correspondent states that the police do not always know whether service is effective in cases in which the defendant intends to be represented at the hearing, and he asks whether in such a case the defendant, appearing with his advocate, could ask for the case to be struck out if the prosecution had not come prepared with their witnesses to prove the case or could ask for costs if the hearing were adjourned. Our answer to that is that it would be open to the court to dismiss the information, and that the defence would certainly be entitled to ask that the question of the costs of that hearing be borne in mind when the case was subsequently heard. The prosecution cannot claim that they have a right to expect the defendant to acknowledge the receipt of a summons, convenient though it is if he does so, and unless they have positive information that it will not be possible to proceed with the case on the due date they must come prepared to prove the case.

Our correspondent also asks whether a certificate of receipt obtainable for a fee from the post office when a registered letter is delivered could be held to comply with the requirement of r. 76 (2) if the signature on it bore the defendant's name, in other words could it be treated as an "other communication" purporting to be written by the defendant. We have some doubts on this, although we think it could be argued that it would be a reasonable inference from such a receipt that the summons had come to the defendant's knowledge.

To revert to the question of the acknowledgement of the summons we still feel that the balance of advantage is that such acknowledgements should go to the court. It should not be difficult, when the police difficulties are appreciated, to arrange a convenient system for ensuring that the police get early information about the cases in which an acknowledgement has been received, but we would emphasize the danger of their assuming that because nothing is received from the defendant it is safe for them to warn witnesses not to attend on the due date.

Reducing the Charge

When the chairman of a bench announced that they had decided to reduce a charge of dangerous driving

to one of careless driving and proceeded to state the penalty and disqualification, the defending solicitor said their decision was irregular. There was consultation, and reference to *Stone*, states *The Western Morning News* reporting the case, and then the chairman said the decision would be withdrawn and the court directed that at a subsequent court the defendant should appear to answer the charge of careless driving.

It was well established long ago, that a magistrates' court may not convict of a charge different from that preferred by the information, this not being a variance in form to be cured by amendment, *Martin* v. *Pridgeon* (1859) 23 J.P. 630. If there were power to convict of a different offence, it would not have been necessary to provide the special procedure laid down in s. 35 of the Road Traffic Act, 1934, to direct or allow a charge of careless driving to be preferred upon the dismissal of a charge of dangerous driving, subject to the safeguards of the section.

The general principle is that if the charge preferred is not made out the justices should dismiss it. Then, subject to any question of time limit, a fresh charge can be preferred, and the defendant will know exactly what he has now to answer.

Police and Public

The police would find the carrying out of their duties much more difficult if the public ceased to co-operate as they largely do at present, and the police are never anxious to take action which will antagonize any considerable section of the public. Nevertheless it is the duty of the police to seek to enforce the law, and this is bound at times to produce some ill-feeling on the part of members of the public who are adversely affected by their activities. We are somewhat puzzled by a report in the *Police Review* of December 6, about a matter affecting the relationship between the police and the public. It is stated that the roads committee of a county council asked the local chief constable in a letter that the 30 m.p.h. speed limit in built-up areas should be more strictly enforced. The chief constable is reported to have replied by asking the committee if they would release their letter to him for publication in the press so that the public would realize that if the police took action as requested they were doing so at the specific request of the committee.

We have not seen the letters referred to and we are not sure, therefore, whether we have all the relevant information. It seems, however, to be a reasonable inference that it is accepted that the speed limit could be more strictly enforced and that the object of the chief constable's request must be to enable him to say to the public, in effect, "don't blame the police if you are prosecuted for breaking the law in this respect, blame the roads committee." The situation is an unusual one, but we do not feel that further comment is justified.

The Health Service Dispute

It was a wise decision on the part of associations representing staff in the National Health Service, to put an end to the ban on overtime. It is true that the ban had been arranged in such a way as not to interfere directly with the interests of patients, but merely to cause inconvenience to the Ministry of Health. It might nevertheless have been supposed by ordinary members of the public that the staff were furthering their own advantage at the cost of innocent and helpless people; however mistaken this impression was, it could have done harm, especially if it became generally known that the standard working week is no more than 38 hours, which by some members of the staff can be worked in a five day week. Whether the staffs concerned have been well advised to put forward a new claim, for a wage higher than that which the Government refused so lately, is a question which can be answered only by results. It is evidently assumed that the claim will be rejected, and that then it will go to arbitration. It is apparently expected that arbitration will, as in so many cases in the last two years, split the difference, and that the House of Commons (though not compellable to do so) will then find money to implement the award. If events take this course, the moral will no doubt be understood to be that it pays at the outset to make a claim which you are sure will not be accepted at the Whitley Council. Our article at 121 J.P.N. 827 on the subject of a paper circulated to members of Parliament by NALGO has prompted their Public Relations Officer to send us a further statement of the case as NALGO see it. This statement is unfortunately too long for us to publish as it stands, and if we printed extracts we might come under suspicion of improperly omitting something. A great part of the statement goes over the same ground as the paper to which we referred last year, recounting the history of Whitleyism in the National Health Service. The substance of the rest will, we think, be found in NALGO's own publication, *Public Service*, for December, of which a copy was sent to us a little earlier.

We recommend any of our readers who have not seen it to obtain this publication, which will give them a more ample knowledge of the background to the dispute than can be gathered from the ordinary newspapers. We must however make one comment. In the early days of the first post-war Labour Government, we protested against allegations of bad faith directed (by newspapers which opposed the Government) at Mr. Aneurin Bevan, the new Minister of Health. To impute bad faith to an opponent is (to say the least) bad tactics, unless you are in a position to prove it convincingly in the courts, or in the forum of public opinion, as the case may be.

The reiterated charge of bad faith, or promise breaking in the present matter against the present Government, and in particular against Mr. Walker Smith, is based upon the fact that the latter has found himself unable to endorse, automatically, agreements upon the Whitley Council which his predecessor 10 years ago fully expected to be able to endorse. The Public Relations Officer makes the further point that, apart from the Government, the bodies represented on the management side of the Whitley Council are prepared to concede the disputed claim: indeed, that they would like to give an increase because of the difficulty of recruiting staff. No doubt they would—they do not have to find the money.

It has been remarked in the last few years by serious economists as well as journalists that one of the causes of inflation is the conceding of increased remuneration or shorter working hours, by managements who were confident that the cost could be passed on to the consumer. In the National Health Service the consumer is the taxpayer; it is he and not the managements who immediately employ the staff on whom the cost will fall.

Those managements are indeed even more free than the managers of nationalized industries from the check upon vicarious generosity imposed on the directors of a company; the latter are at least answerable to shareholders who expect a dividend.

It may be that the present dispute must end in granting the desired increases, because (as the staffs maintain) the requisite staff cannot much longer be secured at the former rates of pay. All we are concerned with here is to

point out that a Government, of whatever party, is not only entitled constitutionally, but is morally bound, to have regard to national considerations which may well have changed since previous assurances were given, or expectations were held out, by some other Government or even by themselves, and that departure from the course which it had been expected they would follow can not, in such an event, be properly stigmatized as a breach of faith.

Salaries Under N.O. 138

On August 21 last the then secretaries to the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services issued circular N.O. 138, giving details of the newly created national salary scale structure. Both secretaries have since retired and may now be engaged on tasks or hobbies which we hope will bring them greater joy than this latest, and some think misshapen, child of the National Council has brought to many local authorities.

We appreciate the reason for the National Council's decision to reduce the number of A.P. & T. gradings from seven to five. There were too many grades when the scheme was first promulgated and reductions were made from 10 to seven: the Council evidently thought that further telescoping was required for the general good of the service and produced this scheme. But they have created with it some difficult problems. This is recognized in para. 2 (1) which states that the new grades and structure require " a re-orientation of view with regard to the question of the grading of posts and, in certain instances, with regard to the duties and responsibilities which are attached to posts . . . the new structure will clearly justify in many instances some adjustment of the duties and responsibilities which are now attached to particular posts."

Problems will arise particularly in the case of new A.P.T. I (replacing former grades I and II) and new A.P.T. III (replacing former grades IV and V). For example, an officer formerly on IV receives at the maximum an increase of £117 17*s*. 6*d*. (13 *per cent*.) while his colleague formerly on V gets only £30 15*s*. (three *per cent*.). The previous difference in their maxima was £87 2*s*. 6*d*.: in future the salaries of both have a maximum of £1,025.

It is easier to talk about re-adjustment of duties than to carry it out effectively in practice and in any case it is a strange policy which first fixes the salary and then requires duties to be adjusted to it. Most local authorities will by now have completed their study of the circular and application of its provisions: we shall be interested to learn how many have found it practicable to iron out anomalies by altering duties. We understand that a number have already decided that revision of duties is impracticable and that anomalies must be endured for the present.

It will be recalled that the circular specifically states that the creation of the new grades and the method of assimilation thereto shall not accord a right of appeal to existing staff. But this is not the important point: the thing that does matter greatly is that staffs should be convinced that justice has been done. This view some of them must obviously find it hard to take. It is possible, for example, that the head ot an office section and his deputy may now find themselves on the same level. How can the deputy's duties be altered without reaction on a number of others in that section alone? And if the section head's salary is not uplifted is he likely to be contented?

We would say a final word to the National Council. Salary and establishment work is not directly productive, nevertheless in the last decade a great deal more of the time of more and more people has had to be given to it. It has become a costly section of local government overheads and should be diminished rather than increased. No doubt the Council have this point much in mind: we hope for results.

THE CRIMINAL STATISTICS FOR ENGLAND AND WALES FOR 1956

This annual report " presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, November, 1957," is in three parts, an introductory note with graphs and appendices (pp. v to lvi), comparative tables of figures for the years 1930–1956 (pp. 1 to 19) and the annual tables for the year 1956 (pp. 21 to 92). Our readers will appreciate that there is a mass of information and that all that can be done in an article of this kind is to select for comment items at random, it being quite impossible to attempt any sort of summary which will deal adequately with the report as a whole.

The introductory note is essential to the proper understanding of the figures in the tables. It is made clear that the tables giving statistics of court proceedings and their result show the number of occasions on which proceedings were completed but not (apart from exceptions which are specified) the number of different offenders dealt with nor the number of offences involved. Information on these last mentioned matters is given, however, in paras. 15 to 18 of the introductory note. In 1956 a total of 108,705 different persons (95,265 male and 13,440 female) were found guilty of indictable offences. This involved 115,874 principal findings of guilt and 37,349 additional findings of guilt, making 153,223 in all. Children and young persons were responsible for 36,047 of the total of 108,705 and in their cases the total number of findings of guilt was 52,397. The volume of work done by the magistrates' courts is shown by the fact that only 17,695 of the principal findings of guilt were recorded in courts of Assize or quarter sessions and magistrates' courts were responsible for the remaining 98,179. In the higher courts 65 *per cent*. of those found guilty were convicted, on any one occasion, in respect of only one offence, 22 *per cent*. of two offences and eight *per cent*. of three offences. The figures are also given for those convicted of from four to 10 offences and of 11 and over. For those convicted at magistrates' courts the corresponding percentages are 82, 13 and three.

Indictable offences are grouped under the headings larceny, breaking and entering, receiving, frauds and false pretences, sexual offences, violence against the person and robbery, and there are given, in paras. 20 to 26 of the introductory note, figures showing for the years 1938, 1954, 1955 and 1956 the numbers of persons in various age groups who were found guilty of offences classified under these headings. The age groups are eight to 13, 14 to 16, 17 to 20, 21 to 29 and 30 and over. The totals for fraud and false pretences and for

sexual offences for 1956 show percentage decreases, compared with 1955, of two and one respectively. The other groups all show increases, as follows: larceny six, breaking and entering 14, receiving 10, violence against the person 21 and robbery 20. For 1954, 55 and 56, the percentages in the different age groups under any particular heading do not vary greatly but greater differences are noticeable when the 1938 figures are considered. In 1938 the 17 to 20 and the 30 and over groups accounted for 16 *per cent.* and 28 *per cent.*, respectively, of the total under the heading "larceny." In 1956 the corresponding percentages were 12 and 34. In the breaking and entering group in 1938 the eight to 13 and the 14 to 16 age groups were responsible for 36 and 26 *per cent.* respectively. In 1956 the figures were 30 and 21. For the same years the 21 to 29 group's percentages were 15 and 21. Under "violence against the person" the 17 to 20 group's figures were 10 *per cent.* in 1938 and 21 *per cent.* in 1956, while the 30 and over group's were 50 and 33 respectively. This is a rather disturbing increase in the commission of crimes of violence by the younger age group, the figures for 1956 being worse, from this point of view, than those for 1955 and 1954.

The number of persons found guilty of indictable offences by courts of Assize and quarter session in 1938 was 8,612. For 1956 the figure was 17,695. The corresponding figures for magistrates' courts were 69,851 and 98,179 respectively. Chapter VI of the introductory note shows how the courts dealt with persons found guilty of indictable offences, figures being given for the different age groups. No startling changes in the percentages of offenders dealt with in the various ways are noticeable. A smaller percentage of offenders were sent to borstal in 1956 than in 1938, the figures being 30 and 37 *per cent.*, respectively, of the offenders dealt with at the higher courts in the 17 to 20 age group. In magistrates' courts for children and young persons less use was made of probation in 1956 compared with 1938 and more offenders were conditionally discharged. These courts sent a noticeably smaller percentage of offenders in the 21 and over age group to prison in 1956 than in 1938, the figures being 17 *per cent.* and 26 *per cent.* respectively. On the other hand they fined 55 *per cent.* of offenders in this group in 1956 compared with 32 *per cent.* in 1938.

The number of persons found guilty of non-indictable offences in 1956 was 668,156 compared with 627,591 in 1955, 618,565 in 1954 and 709,019 in 1938. A comparison which may cause some surprise is that between the figures for "traffic offences" for 1938 and 1956. These offences are those classified in the tables under headings 122 to 138 inclusive, starting with obstructions and nuisances other than by vehicles and including offences with and in connexion with various types of vehicles. For 1938 the total was 475,124 and for 1956 it was 452,346. One reads so much about the increasing congestion of traffic and about the very much greater number of vehicles on the road that it would have been reasonable to expect that the number of traffic offences had greatly increased since 1938. On the contrary, the 1956 figure was over 22,000 less although it was some 45,000 greater than the 1955 figure of 407,815.

Information is also given about certain non-criminal proceedings in magistrates' courts. Taking the years 1938, 1954, 1955 and 1956, the numbers of affiliation orders made were 4,313, 3,842, 3,598 and 3,458 respectively. Table XII shows that the 3,458 orders made in 1956 were out of 4,191 applications for such orders. The assumption is that in the remaining 733 cases the complainant failed to make out her case. For the same four years the numbers of maintenance orders made under the Summary Jurisdiction (Separation and Maintenance) Acts were 11,177, 13,613, 12,644 and 13,107 respectively. Here there seem to be a larger proportion of unsuccessful applications because the number of applications in 1956 was 23,378. Orders under the Guardianship of Infants Acts were 1,319, 5,150, 4,933 and 4,806 respectively for the same four years. The number of applications in 1956 was 6,726. The numbers of adoption orders made in juvenile courts are also given. In 1956 there were 8,234 applications, 436 of which had not been heard by the end of the year. Seven thousand seven hundred and thirty-one orders and 54 interim orders were made. It may be that a case in which an interim order was made is also included in the figure of 7,731 if an adoption order was subsequently made in the same case. The numbers of adoption orders in 1955, 1954 and 1938 were 7,895, 8,070 and 5,392 respectively.

In the comparative tables in the criminal statistics there are tables A, B, C, D and E. Table A comprizes indictable offences known to the police, B gives the numbers of persons for trial at Assizes and quarter sessions and the nature of their offences, C deals similarly with magistrates' courts for indictable offences and D with those courts for non-indictable offences. Table E gives a summary of tables A to D, with proportions of offenders to population. The figures are given as annual averages for the periods 1930 to 1939, 1940 to 1949 and 1950 to 1954 and the year's actual figures are given for 1955 and 1956. On this basis the offences known to the police were, respectively, 231,025, 424,847, 481,363, 438,085 and 479,710. The annual average per million of the population was 6,390·6 in the period 1930 to 1939 and 12,199·8 in 1956. The number of persons tried on indictment or dealt with summarily for indictable offences averaged 75,196 a year in the earlier period and was 122,466 in 1956, the corresponding figures per million of the population being 2,080·1 and 3,114·5. These figures seem to leave no room for doubt that crime is more prevalent at the present time than it was in the pre-war years.

In the annual tables for 1956 table VI gives figures about appeals to the Court of Criminal Appeal. In the cases of persons convicted on indictment there were 956 applications for leave to appeal and of these 335 were abandoned, 490 were refused and 131 were granted. There were a further 13 appeals for which leave was not required, and two in which the trial Judge gave his certificate. In five of the total of 146 cases the appeal was abandoned, in 35 the conviction was affirmed and in 21 it was quashed. In 10 cases the sentence was affirmed and in 75 cases it was quashed but some other sentence was substituted. One hundred and twenty-three persons who were sentenced at quarter sessions after committal there under s. 28 or s. 29 of the Magistrates' Courts Act, 1952, applied for leave to appeal against their sentences. Fifty-eight abandoned their application, in 48 cases leave was refused and in the remaining 17 it was granted. Of these 17 one abandoned his appeal; in seven of the remaining 16 cases the sentence was affirmed and in the other nine the sentence was quashed and some other sentence was substituted.

In magistrates' courts in 1956, 571,813 men and 61,664 women were convicted. These figures take into account all offences triable in those courts in the case of persons aged 21 and over. The corresponding figures for those aged 17 to 20 inclusive were 60,774 and 5,091; for young persons (14 to 16) they were 32,436 and 2,372 and for children (eight to 13) they were 30,466 and 1,881. We should perhaps make it clear that in the cases of young persons and children "found guilty" must be substituted for "convicted." With

these figures in mind it is interesting to look at table XIII, which gives particulars about appeals from magistrates' courts to quarter sessions. The total number of persons who appealed was only 1,967. Three hundred and seventeen abandoned their appeals. In eight cases the case was remitted by quarter sessions to the magistrates' court, 270 convictions were quashed, 621 were confirmed without any variation and 221 others were confirmed with a variation of the sentence or order. In the cases in which appeal was against sentence only the sentence or order was confirmed in 238 cases and varied in 292. If our arithmetic is correct these figures show that out of a total number of 766,497 persons found guilty by magistrates' courts only 1,967, equal to about one in 385, took any steps to appeal against the decisions of those courts and nearly one-sixth of these abandoned their appeals. When we allow for the fact that some persons who were not satisfied with the courts' decisions did not think it worth while to pursue the matter by appeal these figures do seem to show that the hard working "maids of all work" in the criminal courts world do their job reasonably well in the view of those who are charged before them.

There are no figures to show what prosecutors thought of their decisions, but there is no reason to suppose that they are, on the whole, other than satisfied.

Figures are also given of appeals to quarter sessions in bastardy cases, cases which are by no means easy to decide when there is any real dispute between the parties. We have given the figures of applications for 1956 as 4,191, with 3,458 orders made. There were 53 appeals against the making of an order and 30 appeals against the refusal to make an order. Nine of the 53 were abandoned, in 31 cases the order was upheld, in seven the magistrates' court's decision was varied and in six it was reversed. Of the 30 other appeals five were abandoned and orders were made in 18 cases. In the remaining seven the refusal to make an order was confirmed. It is somewhat remarkable that a far higher proportion of the appeals against refusal to make an order were successful than of those against the making of an order.

The probation service has expanded enormously since its early days and it is interesting to note the figures given to persons placed on probation during 1956 by all courts. The total was 31,585 of whom 5,063 were females. During the year 5,652 persons who were on probation were brought again before the courts either because they had committed a fresh offence or because they had failed to comply with a requirement of their probation orders, or for both reasons. One thousand seven hundred and thirty-six of the 5,652 "failures" were aged 21 and over and the remainder were under 21. Supervision of persons placed on probation is, of course, only one of the many duties which probation officers have to perform. It is not within the purview of the criminal statistics to give information about these other duties.

SUMMARY TRIAL OF INDICTABLE OFFENCES: "HAVING BEGUN TO TRY . . ."

[CONTRIBUTED]

It is provided by s. 24 of the Magistrates' Courts Act, 1957, that a magistrates' court, having begun to try an information for an indictable offence summarily, shall not thereafter proceed to inquire into the information as examing justices, unless they purport to act under s. 18 (5). This limitation did not appear in the Criminal Justice Act, 1925, and indeed it had been held (*R.* v. *Hertfordshire JJ.* (1910) 75 J.P. 91) that at any stage of a case which justices had determined to try summarily, even after witnesses for the defence had been called, justices had power to discontinue summary trial and to commit for trial.

Recent cases have been concerned with the meaning of the words "begun to try," in connexion with a defendant changing his mind or the court declining to exercise jurisdiction after the defendant has consented to summary trial.

The first of these cases is *R.* v. *Craske, ex parte Commissioner of Police of the Metropolis* [1957] 2 All E.R. 772; 121 J.P. 502. This was a case where the defendant was charged with an indictable offence and consented to summary trial and pleaded not guilty. He applied for an adjournment to be legally represented, and at the adjourned hearing through his counsel he wished to withdraw his consent and to be tried by a jury. To this course the magistrate agreed and the prosecution applied for an order of *mandamus* requiring him to proceed with the hearing of the charge. The Divisional Court, however, upheld the stipendiary. A magistrate does not begin to try a case, held the Court, until he begins to hear the evidence, and the mere taking of a consent to summary trial and a plea should not operate to deprive a defendant of his right to trial by jury.

The point was taken a stage further in *R.* v. *Ibrahim and Others* (*The Times*, December 11, 1957) where the court, and not the prisoner, changed its mind. The defendants, being charged with causing grievous bodily harm, consented to summary trial and pleaded not guilty. Counsel for the prosecution then opened the case, and at the conclusion of the opening the magistrate said he would not try the case summarily. He then took evidence and committed the defendants for trial for causing grievous bodily harm with intent. Following their conviction on this charge at the Central Criminal Court, the defendants appealed to the Court of Criminal Appeal on the ground that their committals were invalidated by s. 24.

The Court held the point to be fully covered by *R.* v. *Craske* (*supra*) and reiterated that a trial does not begin until the court has begun to hear evidence: the magistrate had heard an opening speech, but no evidence, and he was entitled to decline to proceed summarily.

A third variation of this theme now becomes possible, *viz.*, where the defendant consents to summary trial, pleads guilty and thereafter wishes to withdraw his plea and to be tried by a jury.

This problem requires a little consideration.

In the first place a plea of guilty is equivalent to a finding of guilt and is a conviction. "There is no distinction in law between a conviction by the verdict of a jury or a finding of a court, and a conviction on a prisoner's own confession" (*R.* v. *Grant* (1936) 100 J.P. 324).

Further, following conviction "there is no longer an issue between the Crown and the prisoner . . . and there is no more

room for evidence except what may be considered necessary to inform the mind of the court of the prisoner's previous history to enable the court to assess the proper sentence. There is no obligation on a court to hear evidence after verdict" (*R.* v. *Butterwasser* (1947) 111 J.P. 527). Much the same principle is expressed by s. 13 (3) of the Magistrates' Courts Act, 1952—"If the accused pleads guilty, the court may convict him without hearing evidence."

So, at first glance, it would appear that where an accused person charged with an indictable offence consents to summary trial and pleads guilty, he is convicted and all that remains is for the court to pass sentence.

It would appear, however, that this is not necessarily the only conclusion.

It is well established law that a person who has pleaded guilty may, in certain circumstances, be allowed to change his plea. This was put clearly by the Lord Chief Justice in the case of *R.* v. *McNally* [1954] 3 All E.R. 372, where he said, "We take this opportunity of stating firmly what is the position with regard to a prisoner who desires to change his plea. If he has pleaded circumstances from which the court can see that there is no question of mistake, the court is not bound to allow him to withdraw his plea. If, however, it appears that there are sound grounds for the application as, for instance, where a prisoner charged with receiving stolen goods pleads guilty and later says: "I received them but I did not know they were stolen," the matter is entirely in the discretion of the learned Judge . . . The question whether or not a plea can be withdrawn is entirely one for the learned Judge who is not bound to allow a plea to be withdrawn once it has been made. If the court came to the conclusion that there was a question of mistake or misunderstanding, or that it would be desirable on any ground that the prisoner should be allowed to join issue, no doubt the court would allow him to do it."

The principle here expressed applies, of course, equally to magistrates' courts, and in the exercise of their discretion, being satisfied that a plea of guilty has been tendered because of a mistake or misunderstanding, justices may allow a prisoner to withdraw his plea and plead not guilty.

That having been done, the case has to be tried *ab initio* and evidence has to be called. In other words, we are back to the situation that existed in *R.* v. *Craske*—consent has been given, a plea of not guilty has been tendered and no evidence has yet been given. If now the prisoner says he wishes to be tried by a jury he must be given that right, and the justices must thereafter act as examining justices.

If, however, the justices are not satisfied that the plea of guilty was tendered because of a mistake or misunderstanding they should not allow the plea to be withdrawn. They can only proceed to pass sentence, and by operation of s. 24 the defendant cannot be committed for trial.

THE LOCAL GOVERNMENT BILL:
THOUGHTS ON FINANCIAL PROPOSALS

(*Concluded from p. 6, ante*)

Part IV of the Bill contains very important provisions, including the repeal or alteration of archaic law, which will be of great advantage to local authorities.

Trustee Securities (*cl.* 50)

We have on previous occasions (for example, in our issue for August 3, 1957, at p. 498) called attention to the anomalies of the present law relating to the investment of trust funds, and the unjustifiable disabilities under which some local authority borrowers labour as a consequence. Clause 50 of the Bill now proposes that a trustee should be authorized to invest with any local authority, any body all the members of which are members of local authorities, and river boards. Another important illogicality remains however. A trustee cannot purchase local authority stocks at a price exceeding 15 *per cent.* above par or at any premium whatever if the stocks are redeemable in less than 15 years of the date of purchase. There is one exception: London county council consolidated stocks are authorized investments although standing at a premium and whatever the date for redemption. The Bill does nothing to remedy this anomalous position.

Consolidated Loans Funds (*cl.* 51)

The Bill provides that county and county borough councils, metropolitan boroughs and county districts with populations of 60,000 or more should be given power to establish consolidated loans funds, but only in accordance with schemes to be approved by the Minister. A consolidated loans fund is merely a financial device for the better and more economical administration of loans raised by local authorities. If the Prime Minister is concerned, as we feel certain he must be, to see that his words on the Bill in the Debate on the Address are implemented, he should insist that the words in this clause requiring the approval of the Minister be deleted. He said on November 5 last, ". . . the Measure will also deal with the financial question—the sinews of the local government system, and here the main objects will be to increase the financial independence of local authorities."

The continuation of the wording of Local Acts in this general Bill indicates that Whitehall still thinks local authorities cannot be trusted, whatever the sophistries with which those concerned may overlay this basic belief. The same attitude is clear in relation to capital receipts: however small or insignificant, not a penny must be applied without departmental consent. The Bill contains nothing to abolish periodical labour of the mountain for this purpose and no doubt after the usual lengthy gestatory period further mice of equal value to those of the past will be produced.

This tender care for the ratepayers is all the more touching when compared with the policy which mulcts the same unfortunates of prodigious sums by forcing local authorities who wish to raise loans to go to the money market in a competing free-for-all when good sense dictates and it is within the power of the Government to ensure that co-operative and economical measures should be substituted. If it can be done for the nationalized industries it can be done for the local authorities.

Receipt and Payment of Monies (*cl.* 54)

This clause proposes to repeal ss. 86 (2), 184 and 187 of the Local Government Act, 1933 and ss. 60 (3), 119 and 122 of the London Government Act, 1939. These sections enshrine the archaic law governing the making of payments by local

authorities. The Local Government Act sections provide, *inter alia*, that payments from the county fund are to be made in pursuance of an order of the county council signed by three members of the finance committee present at the meeting of the council at which the order is made and countersigned by the clerk. Cheques are to be countersigned by the clerk or some other person approved by the council. Payments from the general rate fund are to be made in pursuance of an order of the council signed by three members and countersigned by the town clerk. There are no statutory provisions governing the procedure of county district councils: the 1933 Act merely consolidated older law dating from the Municipal Corporations Act of 1835.

The proposal is wholly admirable. The position whereby some groups of local authorities are required to follow a prescribed statutory procedure while others are not, is obviously anomalous and indefensible. This is particularly so when the statutory prescriptions are completely impracticable under modern conditions and in relation to the vast undertakings which so many local authorities have now become, and have therefore been complied with, if at all, only by shifts or stratagems paying the merest lip service to the intention of the statutes.

If and when the clause is passed, all local authorities will be faced with the need and opportunity to review their present arrangements and doubtless much useful O. & M. work will be done. Future procedure will be determined by a number of factors, including the size of the authority. In the largest authorities detailed examination of bills by members is practically impossible, but in smaller bodies where local knowledge can usefully be applied members may feel that a good purpose is served by committee scrutiny. The important point is that any time which members may decide to spend in this way should be well and fruitfully spent: a check which degenerates into mere formality is to be avoided at all costs. We think that even in the largest authorities members have a part to play by the application of test checks. These may well be of the kind already used by some councils whereby a limited number of accounts are selected periodically for detailed examination and report. Such examination goes beyond a mere certification that the amount in question is correct and payable: in many cases it is used as the means whereby a continuous check and review is made of departmental systems, methods of purchasing and related matters. We have previously referred* to the problem of departmental co-ordination and the avoidance of unnecessary duplication of checking in the payment of accounts and of wages and salaries and other items. The new clause will, we hope, assist in bringing these matters to the fore and will ensure that they are investigated.

*Too Much Auditing ? (121 J.P.N. 328–329).

Financial Relationships between County and County District Councils (*cls.* 52 *and* 53)

From April 1, 1959, there will be no requirement for a county council to contribute to the salary of a medical officer of health or public health inspector of a county district or metropolitan borough. This is one of the small tidying up provisions, like the abolition of a number of small grants of little financial consequence, which we imagine will be generally welcomed.

The new power by which county councils are to be empowered to make any contribution they think fit to county district expenses is one which has great possibilities. Section 307 of the Public Health Act, 1936 (which enables a county council to contribute towards expenses incurred by any of its county district councils on sewers or sewage disposal works or water supply) and s. 126 of the Local Government Act, 1948 (which empowers a county council, with the consent of the Minister, to contribute towards any expenses incurred by any of its county districts) will be repealed. It will be recalled that contributions under both these sections must have regard to the resources of the county district.

Compensation to Displaced Officers (*cl.* 56)

Any order made under part II of the Bill relating to reviews of local government areas in England and Wales or scheme under part III relating to delegation of functions relating to health, welfare and education to county districts may result in loss of employment or diminution of emoluments by officers affected. The Bill provides that compensation shall be paid to such officers in accordance with regulations to be made by the appropriate Minister but no indication is given of the compensation code to be applied.

This is another matter to which we have previously referred:** we think it important. As our earlier note pointed out, prior to the passing of the Local Government Act, 1948, compensation was based on the more generous code of the Local Government Act, 1933. There are notable differences between the two codes which we particularized.

It is apparent that the work of the Local Government Commissions, and later of the county councils, in making reviews and reaching effective conclusions will not be easy. Anything that will assist in the satisfactory conclusion of this work is desirable, and we repeat our earlier expressed opinion that the small additional cost to public funds involved in the adoption of the 1933 code would be more than repaid in the advantages the adoption of the more generous provisions would bring. The cost would be small: on the other hand progress would be facilitated.

**Compensation for Loss of Office (121 J.P.N. 690–691).

THE LAWYER-CLERK CONTROVERSY

[CONTRIBUTED]

It is hardly surprising that someone should quarrel with the views expressed in the article in your issue of September 14 on the lawyer-clerk controversy. What is surprising, to my mind, is the "*answer*" produced by "A Deputy Town Clerk" who is presumably a solicitor, although his reasoning would not lead one to suppose so. He has chosen to argue on the theme that there is certain work in local government which only a lawyer can do (a contention with which no one is likely to disagree) and he thereby speciously concludes that only a lawyer can act effectively in the office of clerkship. Nothing, perhaps, need be said of his suggestion that it is pompous nonsense not to surrender principles for promotion.

The original article sought to show the unhappy position of a local government officer, already fully qualified by experience and professional qualifications for clerkship, who is virtually denied the opportunity of employing his abilities to full advantage by the convention that he must first secure an additional qualification, which in no way adds to his administrative

ability or administrative qualifications or his knowledge of local government.

The article was clearly written on the premise that the clerk's true role is predominantly if not exclusively administrative. Is " Deputy Town Clerk " really unable to accept the truth of that premise? Maybe so, because the picture he gives in his article of a clerk's activities is a very unreal one.

" Deputy Town Clerk " suggests that few councils agree with the views expressed in the first article. He may be right in this. How many councils, after all, are encouraged to examine the position objectively? A council who have had the services of a lawyer-clerk are unlikely to be advised by him to appoint other than a lawyer-clerk as his successor. What is important in this connexion, however, is that whenever there has been an unprejudiced assessment of the clerk's role the conclusion has invariably been the same: that local authorities should choose their clerks primarily for administrative rather than legal qualifications.

" Deputy Town Clerk " would know this if, instead of reading for the Law Society's examinations, he had studied the specialized business of local government administration. I commend to his attention the relevant parts of the reports of the Onslow Commission (1923-29) and the Hadow Committee (1934) and the opinions of eminent writers so diverse in character as Professor W. A. Robson and Sir E. D. Simon, but perhaps he would dismiss their views as " vague talk." I think particularly he should be reminded of the conclusion in the Treasury's O. & M. report on their survey at Coventry (1954) that—

> " it would no longer be appropriate for the holder of the post (of town clerk) also to be the council's legal adviser because that would serve to obscure the purely administrative nature of the post and weaken it by the association of unrelated activities."

It may be that I am taking " Deputy Town Clerk " too seriously. There is so much which could be said to refute almost every point he makes, but so little space available in these pages. The short rejoinder surely is this. Local government will never be as efficient as it might be if we continue to run it on the assumption that a training in law produces men and women competent to do an entirely different job of work.

[We have been glad to find space for this topic to be thrashed out, and feel it must now rest. One impression which may be left on the minds of readers is whether local government officials, even in the highest ranks, are properly to be considered as doing administrative work at all. But this might lead to further controversy.—*Ed., J.P. and L.G.R.*]

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Lord Evershed, M.R., Romer and Ormerod, L.JJ.)

MACFARLANE *v.* GWALTER

December 10, 11, 19, 1957

Highway—Non-repair—Grating admitting light to cellar of adjoining premises adjoining highway—Dedicated as part of highway—Liability of owner or occupier of premises for resulting accident—Public Health Acts Amendment Act, 1890 (53 *and* 54 *Vict., c.* 59), *s.* 35 (1).

APPEAL from Gravesend county court.

The plaintiff was walking along the pavement of a public highway when her left leg went through an iron grating. The grating, which admitted light to the cellar of an adjacent building, was in bad condition and constituted a nuisance. The defendant, the occupier of the adjacent building, knew of its condition and failed to remedy it. The grating formed part of the dedicated highway. The plaintiff claimed damages for nuisance caused by the defendant's breach of his statutory duty under s. 35 (1) of the Public Health Acts Amendment Act, 1890, to repair the grating. The defendant contended that he was not under a duty to repair the grating because it was vested in the local authority by reason of s. 149 of the Public Health Act, 1875, and it was, therefore, their duty to repair the highway or any part thereof. Alternatively, he said that a breach of s. 35 (1) of the Act of 1890 did not give rise to a cause of action under the subsection or at common law.

Held: (i) s. 35 (1) of the Act of 1890 imposed the duty to repair the structures on the surface of or under a street referred to therein on the owner or occupier of the adjoining building whether they had been the subject of dedication or not, and, therefore, the defendant, as occupier of the adjoining building, and not the highway authority, was under a duty to keep the grating in repair; (ii) the defendant had failed in his duty to keep the grating in repair and allowed the same to become a nuisance, and, therefore, he became responsible at common law for the injuries suffered by the plaintiff. *Appeal allowed.*

Counsel: *Hugh Griffiths,* for the plaintiff; *Kidwell,* for the defendant.

Solicitors: *Church, Bruce & Hawkes,* Gravesend; *Tolhursts,* Gravesend.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

ANNUAL REPORT OF THE MINISTRY OF HEALTH

The annual report of the Ministry of Health for the year ended December 31, 1956, was published recently. The annual report of the chief medical officer will be published separately as part II.

The report starts by giving an account of the operation of the National Health Service. The total cost was about £535 million which was £40 million more than in the previous year. The cost of the hospital and specialist services went up by £27 million and there were substantial increases in the cost of the dental, pharmaceutical and general medical services. The payments by persons using the services represented 4¾ *per cent.* of the total cost.

The general review of the hospital services shows that the number of patients awaiting admission fell by 24,000 to 431,000, the lowest since the beginning of the National Health Service and about a fifth lower than in 1950 or 1953, the years when waiting-lists were at their highest. To some extent this reduction is attributable to a more intensive use of hospital beds. The number of patients treated has risen by more than five *per cent.* since 1953, nearly half of this rise being in 1956. This improvement has been achieved with no significant change in the number of available staffed beds. There are now practically no waiting-lists for admission for institutional treatment for tuberculosis and it was possible during the year for beds earmarked for respiratory tuberculosis to be reduced from 31,900 to 28,598.

The number of student nurses in hospitals increased by 2,664 to 51,498, the highest figure recorded since the introduction of the new service. The number of whole-time trained nurses decreased by 163, to 50,715, but part-time trained nurses increased by 695 to 11,732. Whole-time enrolled assistant nurses decreased by 227 and those part-time increased by 65. Pupil assistant nurses increased by 151. The number of nursing auxiliaries and others without qualification and not in training increased from 20,595 to 20,804 whole-time and from 14,697 to 16,575 part-time. This resulted in there being nearly half as many unqualified persons employed on nursing duties as there were trained nurses and enrolled assistant nurses.

Turning to the blood transfusion service it is satisfactory to know that the strength of the effective civilian donor panels continued to grow. Of the new donors enrolled 120,501 gave their blood for the first time during the year.

Local Health Services

During the year there was a further expansion of the domestic help service. The care of the elderly and chronic sick continued to make the greatest demand on the service and 68 *per cent.* of the applicants for whom help was provided came within these categories. Help was provided for 161,006 aged and chronic sick compared with 153,439 in 1955. Reference is made in the report to the London county council's scheme for allocating home helps

to live in households where there are young children, when the mother goes into hospital and to a similar scheme operated by the Kent county council which has been extended to provide a preventive and rehabitation service to assist problem families.

A small, but very important, service mentioned in the report, relates to the action which is taken in some areas to try to prevent families breaking up. It is clear that all the efforts in this connexion do something to make social action more effective, even though a case conference by skilled workers in the field of family welfare may not yet be practicable everywhere. Obviously, if it is in the least possible, as shown in the report, preventive action is best and here it is generally the health visitor who has the opportunity of detecting the need for help and advice at an early stage. Usually she is able, in co-operation with the general practitioner or suitable statutory or voluntary bodies, to safeguard the well-being of mothers and children. In some areas the district visitors undertake all such work as part of their normal duties: in others specialist health visitors undertake it. An important aspect of their work is the teaching of child care and home-making. The use of specially selected home helps has also had encouraging results, both with problem families and families in temporary difficulties due, very often, to the illness of the mother. Social case workers have been appointed by a number of authorities, and workers belonging to voluntary organizations, especially the family service units, have also helped very considerably.

Welfare Services.

The section of the report referring to services for the elderly, the handicapped and the homeless, deals with residential services and the provision of welfare services for people in their own homes. By the end of the year local authorities had, since the end of the war, opened 928 homes for the aged and infirm (including the blind) representing bed provision in a modern type of home for some 27,850 residents. Progress in this connexion is, however, now governed by the extent of borrowing which can be permitted for capital projects. Nevertheless all proposals are examined by the Ministry so that they may proceed without delay as soon as it is known that loan sanction can be given. Provision by voluntary organizations of homes for old people and for the blind also proceeds steadily.

The number of persons in residential accommodation provided directly by local authorities or through arrangements with voluntary organizations was an increase of 2,691 on the number for 1955, bringing the total to 74,125, a rise of nearly 60 *per cent.* since January, 1949. The number of women in residential accommodation has almost doubled in the last eight years. Over the same period the number of persons in voluntary homes under arrangements with local authorities increased from 4,430 to 10,254.

Turning to welfare services for handicapped persons it is noted that the proportion of the newly registered blind aged 70 years or over, which has increased steadily for a number of years—in 1937 it was 43·4 *per cent.* and in 1955 69·9 *per cent.*—increased further during the year to 70·1 *per cent.* To try to ensure that remedial treatment is available to all who could benefit by it, more precise information about persons in the older age groups is being obtained. On placing blind persons in open employment it is stated that approximately 50 *per cent.* of local authorities have agency arrangements with the Royal National Institute for the Blind, approximately 20 *per cent.* use the services of other voluntary organizations and approximately 30 *per cent.* provide a direct service.

There are now 108 schemes being operated by local authorities for the provision of welfare services for the deaf and hard of hearing; and 111 schemes for the welfare of other handicapped persons. It has been found that one of the most promising and rewarding lines of development is through the establishment of social centres at which the severely handicapped are encouraged, not simply to meet in groups, but also to find an outlet for creative activities.

Local authorities continued during the year to study ways of co-ordinating health and welfare services which enable old people to go on living in their own homes for as long as possible. Most of them support the work of voluntary organizations. It is pointed out in the report that the range and quality of the services provided by the 1,200 old people's welfare committees vary according to the needs and resources of individual areas. But the schemes for providing voluntary visitors are considered to be of first importance. Reference is made in the report to the training schemes organized by the National Old People's Welfare Council with money provided by the King George VI Foundation and to the increasing number of clubs, some of which have also received grants from the Foundation.

The gross expenditure of local authorities under part III of the National Assistance Act, 1948, was £24,100,000, an increase of nearly £2 million over the previous year. The principle item of expenditure was for the provision of residential accommodation which rose to approximately £18 million from £16¼ million in 1954–55. The cost in 1951–52 was £12,700,000. About one-third of this expenditure was for remuneration of staff.

WILTSHIRE—COST OF SERVICES, 1956–57

Wiltshire is a county where the Local Government Bill will have been closely scrutinized and where the result of the reviews there proposed will be awaited with great interest. Four hundred and three thousand people live in the 861,000 acres of the county, which is made up of eight non-county boroughs, five urban districts and 12 rural districts. The rural districts have populations varying from 10,000 to 37,000, the urbans go from 5,500 to 14,400, and the boroughs from 2,700 to 74,000.

The county precept for the year totalled 11*s.* and general rates in the county districts varied from 12*s.* 6*d.* in Amesbury rural to 18*s.* 6*d.* in the borough of Swindon. The county penny rate amounted to £19,200.

County treasurer R. M. Tough, F.S.A.A., in his preface, mentions the difficult task faced by the county districts in estimating penny rate products. In the event the county council's precept income was much higher than expected but because of a fall in grant income it could not be put back into the ratepayers' pockets in the following year.

County expenditure continued to increase due to the general rise in the cost of living, and the necessary development of services. The school population at 59,000 pupils reached an even higher figure than in previous years: cost per pupil in primary schools was £33 and in secondary schools £59. Four million pounds was spent on education out of the total budget of £7¼ million. Surplus at the end of the year was £920,000, £240,000 more than estimated and chiefly due to actual penny rate products exceeding the estimate.

Government grants (including equalization grant of £945,000) met 62 *per cent.* of total expenditure, other income eight *per cent.* and rates 30 *per cent.*

Mr. Tough states that the most significant feature of the capital outlay account is the increase in the level of expenditure for the education service. From £360,000 in 1954–55 it has risen to an estimated £1,600,000 in the current financial year. The county also spent money on capital works for the police, including two new divisional headquarters, and on 66 smallholdings schemes.

Loan debt at March 31 totalled £3,600,000, rather less than half a year's revenue expenditure. It was equivalent to 17*s.* per £ of rateable value.

The county council maintains a printing department and work to the value of £8,000 was done during the year.

Mr. Tough has included in his well-designed booklet a number of statistics giving particulars of work done by the various county services. The figures are emphatic reminders of the volume of transactions carried out. We read for example that weights and measures inspectors examined during the year 90,000 "measures and weighing instruments" and 50,000 articles of food: it is safe to say that the majority of the public is unaware of the quantity of work done for them in connexion with this and other services.

BRISTOL PROBATION REPORT

The number of current probation and supervision orders in force at the end of 1956 in the Bristol division was the highest ever recorded. But the report makes the wise comment that statistics do not tell anything like the whole story as regards probation work. Not only do they leave out of account a great deal of constructive work of a kind which does not lend itself to mathematical summary, but, even as regards orders made by the courts, they do not reveal imponderable factors such as "the personality and background of the defendant and his suitability or otherwise for probation treatment." It might well happen in a given year that the number of offenders diminished whilst the total of probation and supervision orders increased, merely because more defendants than usual were of the type which responds to probation. So we are reminded "it would be a mistake to attach too much importance to these figures, and it would be a mistake to view them in the same light as the production figures and the profit and loss account of a commercial undertaking."

It is comforting to read that pre-trial inquiries are not favoured in this division: we fancy that as the function of probation is more thoroughly understood the bias in the country as a whole will swing strongly in favour of full probation reports made after remand. The essence of probation is a relationship and such can only be properly established by an unhurried and broad-based approach.

The matrimonial work of the Bristol probation service continues to grow, and it is interesting to note that Divorce Court enquiries are becoming a regular feature. In the next decade this branch of probation work will probably expand very considerably. The ultimate repercussions, particularly upon the well-being of children affected by divorce, will be of great social importance.

Bristol provides no exception to the common tale of inadequate and dilapidated premises in which far too many probation officers have to work. It is surely rather odd that social activities in which emphasis is so clearly upon hope and regeneration should be so dismally furnished. These things, we are told, are a constant concern of the probation committee. There is a national problem here, and we hope that it will soon be appreciated as such.

RENT TRIBUNAL AMALGAMATIONS

The following amalgamations of rent tribunals took effect from January 1, 1958, consequent upon a general decline in the volume of work falling to these tribunals:

Ealing and Twickenham

The tribunal at Twickenham is being closed and amalgamated with the Ealing Rent Tribunal.

The office of the new tribunal will be at Craig House, 140 Uxbridge Road, Ealing, W.13; telephone number Ealing 6859.

Paddington North and Paddington South

The tribunal at Paddington South is being closed and amalgamated with the Paddington North tribunal.

Lewisham and Lambeth (part)

The tribunal at Lambeth is being closed and amalgamated with the Bermondsey, Camberwell and Southwark boroughs part of Lambeth tribunal.

The office of the new tribunal will be at 10 Stockwell Avenue, S.W.9; telephone number Brixton 7777, extensions 250 and 251.

Wimbledon and Lambeth (part)

The tribunal at Wimbledon is being closed and amalgamated with the Lambeth borough part of Lambeth tribunal.

The offices of the new tribunal will be at 12–14, Southey Road, Wimbledon, S.W.19; telephone numbers Cherrywood 3782 and 4198.

Oxford and Reading

The tribunal at Oxford is being closed and amalgamated with the Reading tribunal.

The office of the new tribunal will be at 9 Bath Road, Reading, Berks; telephone number Reading 55105.

MAGISTERIAL LAW IN PRACTICE

Manchester Guardian. October 25, 1957.

OFFERED £5 TO OFFICIAL

Woman Wanted House

Miss Dora Elizabeth Botson (50), of Edinburgh Road, Lowestoft, pleaded guilty at Lowestoft yesterday to corruptly offering £5 to the Lowestoft corporation housing manager, Mr. Kenneth Dean, to do an act in relation to his principals' affairs contrary to the Prevention and Corruption Act, 1906. She was fined £15 and ordered to pay £5 5s. advocate's fee.

Mr. T. J. Taylor, prosecuting, said that the consent of the Attorney-General had to be secured to bring the charge and his fiat had been granted.

Mr. Taylor said that Miss Botson, a fruit factory worker, told Mr. Dean that she wanted a prefabricated house. Mr. Dean said that she was not on the waiting list and had not applied for a council house, and he could not help her. She put one of her hands across the counter towards Mr. Dean, who then noticed she was holding a £5 note. She remarked, "This is to make it worth your while."

Detective-Inspector R. J. Prior said that when told of the allegations, Miss Botson replied: "That's right. I wish I had gone back to apologize. I offered him £5 to see if I could get a house."

In a statement Miss Botson said: "I am living with my mother. I want a place on my own. You know how people talk. They say you have to bribe to get a house. I have put myself in a mess now."

The offence in this case is an offence punishable on conviction on indictment by imprisonment for a term not exceeding two years (where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with Her Majesty or any Government department or any public body or a subcontract to execute any work comprized in such contract, not exceeding seven years) or by a fine not exceeding £500, or by both such imprisonment and such fine, or on summary conviction by imprisonment for a term not exceeding four months, or by a fine not exceeding £50, or by both such imprisonment and such fine (s. 1 (1) Prevention of Corruption Act, 1906; s. 1, Prevention of Corruption Act, 1916).

As the offence is triable either on indictment or summarily, s. 18 of the Magistrates' Courts Act, 1952, applies. As it is punishable by more than three months' imprisonment on summary conviction, the defendant may claim to be tried by a jury, as provided by s. 25 of the Magistrates' Courts Act, 1952.

There are several special provisions with regard to procedure in cases under the Prevention of Corruption Acts.

Section 2 of the Act of 1906 provides that: no prosecution shall be commenced without the consent of the Attorney-General or Solicitor-General (subs. (1)): information shall be on oath (subs. (3)): quarter sessions shall not have jurisdiction on indictment (subs. (5)): any person aggrieved by summary conviction may appeal to quarter sessions (subs. (6)).

As quarter sessions have no power to try a case under the Prevention of Corruption Acts on indictment, there is no power on summary conviction to commit to quarter sessions for sentence under s. 29 of the Magistrates' Courts Act, 1952 (*R.* v. *Middlesex Quarter Sessions and Another, ex parte Director of Public Prosecutions* [1950] 1 All E.R. 916; 114 J.P. 276.)

Section 2 of the Prevention of Corruption Act, 1916, provides that where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of Her Majesty or any Government department or a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from Her Majesty or any Government Department or public body, the money, gift, or consideration shall be deemed to have been paid

or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.

Section 3 of the 1916 Act provides that notwithstanding anything in the Magistrates' Courts Act, 1952, proceedings under the Prevention of Corruption Act, 1906, instituted with a view to obtaining summary conviction for an offence thereunder may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor.

NEW STATUTORY INSTRUMENTS

1. **AGRICULTURAL EMPLOYMENT.** Safety, Health and Welfare. The Agriculture (Poisonous Substances) (Endrin and Fluoroacetic Acid) Order, 1957.

This order, made by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland, adds endrin, and fluoroacetic acid and its derivatives to the poisonous substances to which the Agriculture (Poisonous Substances) Act, 1952, applies.

Came into operation on December 25, 1957. 1957. No. 2215.

2. **ANIMALS.** Prevention of Cruelty. The Spring Traps Approval Order, 1957.

Section 8 of the Pests Act, 1954, provides that after July 31, 1958, it shall be an offence to use for the purpose of killing or taking animals a spring trap other than one approved by order of the Minister of Agriculture, Fisheries and Food. By this order the Minister approves certain traps subject to conditions as to the animals for which and the circumstances in which such traps may be used.

Coming into operation on February 1, 1958. 1957. No. 2216.

3. **CLEAN AIR.** The Alkali, etc., Works (Registration) Order, 1957.

The order, which replaces one of 1906, prescribes that the register of certain works under the Alkali, &c., Works Regulation Act, 1906, shall be kept by the Minister of Housing and Local Government, prescribes the particulars which are to be contained in the register and in applications for registration, and makes supplemental provision as to registration and certificates.

Came into operation December 31, 1957. 1957. No. 2208.

4. **LOCAL GOVERNMENT.** England and Wales. The Local Government (Allowances to Members) (Prescribed Bodies) (No. 2) Regulations, 1957.

The regulations include certain bodies among the bodies the members of which are entitled, under the Local Government Act, 1948, to financial loss, travelling and subsistence allowances in respect of the performance of their duties.

Came into operation December 27, 1957. 1957. No. 2203.

5. **NATIONAL DEBT.** The exchange of Securities (No. 2) Rules, 1957.

These rules prescribe the procedure with respect to the acceptance of the offer to exchange 2½ per cent. Defence Bonds and 2½ per cent. Defence Bonds (Conversion Issue) for 4½ per cent. Defence Bonds (Conversion Issue).

Came into operation December 28, 1957. 1957. No. 2210.

6. **NATIONAL INSURANCE.** The National Insurance Act, 1957 (Commencement) (No. 4) Order, 1957.

Came into operation December 21, 1957. 1957. No. 2178 (C.22).

7. **PENSIONS.** Interchange Rules. The Superannuation (Civil Service and Isle of Man Authorities) Transfer Rules, 1957.

The purpose of these rules is to provide for the aggregation of service and a single superannuation award for persons who transfer from pensionable service with certain public Authorities in the Isle of Man to established posts in the Civil Service, and vice versa. Those who transfer can reckon the whole of their service for pension under the superannuation system to which they transfer, subject to the payment of transfer values (calculated on tables approved by the Treasury) by the previous employer in respect of the former service. Subject to the conditions laid down in them, the rules will apply to persons who transferred before the coming into operation of the rules (Superannuation (Miscellaneous Provisions) Act, 1948, s. 2 (5)).

Came into operation December 31, 1957. 1957. No. 2229.

8. **PESTS.** Destructive Insects and Pests. The Importation of Potatoes Order, 1957.

This order modifies, for the period beginning on December 25, 1957, and ending on May 31, 1958, the restrictions imposed by the Importation of Plants Order, 1955, on the importation into England or Wales of main-crop potatoes grown in 1957 in Belgium, France or the Netherlands.

Came into operation, December 24, 1957. 1957. No. 2209.

9. **SUPREME COURT OF JUDICATURE, ENGLAND.** Procedure. The Matrimonial Causes (Maintenance Agreements) Rules, 1957.

These rules provide that applications to the High Court under the Maintenance Agreements Act, 1957, for the alteration of any agreement to which the Act applies are to be assigned to the Probate, Divorce and Admiralty Division and prescribe the procedure to be followed on such applications.

Came into operation January 1, 1958. 1957. No. 2202 (L. 21).

10. **WORKMEN'S COMPENSATION.** The Pneumoconiosis and Byssinosis Benefit Amendments Scheme, 1957.

This Scheme amends the provisions of the Pneumoconiosis and Byssinosis Benefit Scheme, 1952, relating to increases of an allowance in respect of a wife and children. It also amends the provisions of the 1952 Scheme relating to the conditions for entitlement to benefit in respect of byssinosis, by reducing the period of qualifying employment in any prescribed occupation from 20 years to 10 years. These amendments, which have been made pursuant to the National Insurance Act, 1957, and the National Insurance (No. 2) Act, 1957, keep the Scheme in line with the corresponding provisions under the National Insurance (Industrial Injuries) Acts.

The Scheme, in addition, amends the provisions relating to the reference of questions to the medical authorities by providing that certificates of disablement shall be issued by the Medical Board (as was the case before the 1954 Amendment Scheme) instead of by a single member of the Medical Board.

The remaining amendments are of a minor or consequential nature.

Came into operation December 27, 1957. 1957. No. 2212.

NEW YEAR HONOURS
(SECOND LIST)

Owing to shortage of space the following names were omitted from our list of New Year's Honours in last week's issue:

KNIGHTS BACHELOR

Benson, George, M.P., chairman of the Howard League for Penal Reform since 1938; member of the Home Office Advisory Council on Treatment of Offenders.

ORDER OF THE BATH
CIVIL DIVISION

C.B.

Blake, John Clifford, solicitor and legal adviser, Ministry of Health and Ministry of Housing and Local Government.

O.B.E.

Boothroyd, Norman, senior housing and planning inspector, Ministry of Housing and Local Government.

ORDER OF THE BRITISH EMPIRE
CIVIL DIVISION

C.B.E.

Owen, Sir (Horace), Owen C., O.B.E., president, Pensions Appeals Tribunals for England and Wales.

Dean, Eric Walter, assistant solicitor, Board of Trade.

Ward, Anthony Edward Walter, assistant solicitor, Ministry of Pensions and National Insurance.

O.B.E.

Williams, Thomas Leslie, senior legal assistant, Ministry of Pensions and National Insurance.

ORDER OF THE BRITISH EMPIRE
MILITARY DIVISION

O.B.E.

Trotman, Lt.-Col. E. A., T.D., The Somerset Light Infantry, T.A.; clerk to the Keynsham and Weston (Bath) justices.

BILLS IN PROGRESS

1. **Housing (Financial Provisions) Bill.** An Act to consolidate certain enactments relating to the giving of financial assistance for the provision of housing accommodation and to other financial matters.

NOTICES

Mr. W. O. Hart, C.M.G., clerk of the London county council, is to deliver a lecture on "The Local Government of London" at University College (Eugenics Lecture Theatre), Gower Street, W.C.1, on Tuesday, February 25, 1958, at 5.30 *p.m.* Professor R. C. Fitzgerald, LL.B., F.R.S.A., Professor of English Law in the University of London, will be in the chair. Admission is free, without ticket.

NOW TURN TO PAGE 1

A separation and maintenance order may be granted by a magistrates' court, on the complaint of either husband or wife, on the ground that the other party is an habitual drunkard (an expression which, by definition, includes a "drug addict"). (Licensing Act, 1902, s. 5 (1): Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 3.)

GIFT OF TONGUES

The conference of the National Union of Teachers has been discussing the subject of linguistic studies, with particular reference to English. The president reminded his audience that "far too many people today assume responsibility in local and national government without having progressed far beyond the language of their childhood and adolescence, and never acquire the capacity to express themselves clearly, concisely and without ambiguity." He quoted some amusing examples of these deficiencies—a notice in a public library containing the warning "Only low conversation is allowed here," and another outside a dance-hall, stating "The management reserves the right to exclude anybody they think proper."

The Professor of Education at London University put his finger on one of the sore spots when he told his audience: "The defect of most teaching of English is that it is unrealistic. It is conducted in a vacuum. It detaches language from the contexts in real life that alone give it meaning." And he went on to urge that the mere reading of good literature was not, by itself, enough; students must also be trained to use their native language as a medium for the clear expression of the ideas they desired to impart.

These strictures are correct as far as they go. Obscurity of language does sometimes arise from a lack of training and practice in its use. More frequently, however, obscurity of language reflects obscurity of thought. Putting the matter another way, poverty of ideas is bound to show itself in poverty of expression; the writer who has not been taught to develop his critical faculty will tend to rely upon well-worn *clichés*, the danger of which is that they may be no more than a slovenly, hit-or-miss approximation to the meaning of muddled, half-formed ideas in the writer's mind, dressed up in words borrowed from somebody who probably used them in a completely different context. Like a second-hand suit, the *cliché* "fits you where it touches" and hangs in uncouth folds elsewhere, blurring the line of thought and obscuring the figure of speech which ought to be neatly set off by a well-cut clothing of words.

Since language is not merely a subject of study in itself but also the principal vehicle of expression for thoughts and ideas, these are dangers that beset the activities of the scientist, the politician and the lawyer no less than those of the literary practitioner. Slavish adherence to precedents may bedevil the work of the legal draftsman as frequently as indolent resort to the use of *clichés* may mar and obscure the meaning of a political speech or a technical treatise. H. W. and F. G. Fowler, in that useful little book, *The King's English*, have put the matter in a nutshell: "Generous interpretation will generally get at a writer's meaning; but for him to rely on that is to appeal *ad misericordiam*."

It is an interesting speculation how much time the courts would save, and how much expense the litigant could avoid, if the draftsmen of Acts of Parliament, statutory instruments, wills, contracts and deeds formed a clear idea of what they meant to say and cultivated the art of saying it concisely, precisely and unambiguously. Amending legislation by reference—that bane of the careful and trap for the unwary practitioner—if it cannot be abolished altogether, should be reduced to the barest minimum. The fiction that everybody is deemed to know what the law is on a given subject is made positively ridiculous by such enacting words as these, from sch. 8 to the Rent Act, 1957 ("Enactments repealed"):

> "In the First Schedule to the Rent and Mortgage Interest Restrictions Act, 1939, in the entry relating to s. 1 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, the words 'the increased rent or,' the words 'standard rent or' and the words 'if the increased rent exceeds the standard rent by more than the amount permitted under this Act or, as the case may be, the whole of the entries relating to ss. 2, 3, 9 and 10 of that Act and in the first paragraph of the entry relating to s. 12 of that Act the words '(*a*) and'."

Almost as bad is so tortuous a subsection as the following, which is to be found in s. 2 of the Landlord and Tenant (Rent Control) Act, 1949:

> "This section applies to any tenancy of a dwelling-house, being a tenancy to which the principal Acts apply, such that when the dwelling-house is let under the tenancy it is a dwelling-house to which the principal Acts apply."

By treading warily and slowly unravelling the thread as you go along, holding fast to the clue, you come eventually to the heart of the labyrinth; but at what cost of time and temper!

It is such methods of drafting that caused one Lord Justice of Appeal to describe the Rent Restrictions legislation as "a chaos of verbal darkness"; it may be doubted whether much light has been thrown upon, or anything palpable created out of, that chaos by any amending legislation since he made his memorable observation.

There is one character in English literature who was accustomed to develop the theme of an argument in this manner, taking subordinate clauses easily in her stride, and that is Mrs. Sarah Gamp. The following sample of her art (*Martin Chuzzlewit*, chapter 52) is perhaps one of the models on which some draftsmen form their style:

> "Which, Mr. Chuzzlewit, is well beknown to Mrs. Harris as has one sweet infant (though she *do* not wish it known) in her own family by the mother's side, kep in spirits in a bottle; and that sweet babe she see at Greenwich Fair, a-travelling in company with the pink-eyed lady, Prooshan dwarf, and livin' skelinton, which judge her feelins when the barrel organ played and she was showed her own dear sister's child, the same not bein' expected from the outside picter, where it was painted quite contrairy in a livin' state, a many sizes larger, and performing beautiful upon the Arp, which never did that dear child know or do; since breathe it never did, to speak on, in this wale! And Mrs. Harris, Mr. Chuzzlewit, has knowed me many year, and can give you information that the lady which is widdered can't do better, and may do worse, than let me wait upon her, which I hope to do. Permittin' the sweet faces as I see afore me."

A.L.P.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Anglo-Soviet Journal. Autumn Number. Price 2*s.* 6*d.*

Washington and Lee Law Review. No. 2, 1957. U.S.A.: Lexington, Virginia. No price stated.

New Town Assets. The Case for Municipal Ownership. December, 1957. Basildon U.D.C. No price stated.

Annual Report of the Leicester City Welfare Committee, 1956–57.

Annual Report of the Manchester and Salford Poor Man's Lawyer Association.

Speed-up Law Reform. Robert S. W. Pollard. London: The Fabian Society. Price 3*s.*

Civic News Letter. Hetton U.D.C. No price stated.

People in Need. A study of Contemporary Social Needs and of their Relation to the Welfare State. Cyril S. Smith. With a Foreword by Lord Beveridge. London: George Allen and Unwin. Price 21*s.* net.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Contract—*Building—R.I.B.A. form—Goods bought by contractor at increased price.*

The R.I.B.A. form adapted for use of local authorities where quantities do not form part of the contract is used. The dispute is in connexion with the provision of manufactured joinery, *e.g.*, doors, staircases, etc. Joinery or timber was not included in the basic list of materials and goods for the purposes of cl. 25A (2) of the contract and they are, therefore, not eligible for increases in costs under that clause. The contractors, however, claim that the manufacture of these joinery items was sub-contracted to a specialist firm, the sub-contract providing for fixed prices so far as material was concerned but for increases and decreases in the cost of the labour element involved in the manufacture of the joinery, and that they are thus entitled to increases in cost under cl. 25A (3) of the contract so far as the cost of these items is increased by increases in labour rates of the workpeople employed by the joinery manufacturers. The contractors point out that, if they had manufactured the joinery themselves, the claim for increase in labour rates would have been beyond dispute.

It appears that manufactured items such as doors, windows, staircases, etc., are "goods" referred to in cl. 25A (2) of the contract and that, if the contractor's contention is correct, then all manufactured materials (*e.g.*, bricks, cement, etc.), used on a contract would be eligible for increases of labour rates of the supplier's workmen, whether or not they are included in the basic list of prices. It is understood that it is normal practice to obtain the manufactured joinery items in dispute from specialist firms when a number of similar houses are being built.

I shall be obliged to have your opinion on this matter, and if you will also state whether this opinion would be different if the architect for the scheme had agreed to accept the notice given of the increase in joinery prices during the course of the contract, in the erroneous belief that "joinery" was included in the basic list for the purposes of cl. 25A (2). AZOCA.

Answer.

We agree that these articles are "goods," and that it is common for a contractor to buy them from an outside firm. But by not including them in his priced list, supplied under cl. 2 (to which cl. 25A relates back) the contractor took the risk of an increase in the price he had to pay, just as he would have taken the benefit of obtaining them, if he could, at a lower price than he first expected. In our opinion he has no claim, and would have none even if the architect had by oversight certified the increase.

2.—Criminal Law—*Loans which appear to be obtained fraudulently—What offence committed?*

A is in business on his own account as an oil merchant and by virtue of this comes into contact with various farmers. From one of these he obtains a number of cheques to a total value of about £5,000 and from three others about £1,000 each. So far as I can find there has been no false pretence within the meaning of s. 32 of the Larceny Act, 1916. In all cases A has been accepted as a man of good business and financial standing and as such has been given the money as a loan. Had he not been accepted as such he would not have been given any money.

Investigation of his business shows that for a long time he has done business which would yield a very small profit and he seems to have worked on a "robbing Peter to pay Paul" basis. Some of the money has gone on down payments for vehicles and some to settle pressing creditors of whom there are many.

I think that by virtue of the fact that he was accepted as he was, and in view of his true financial position, there must be offences of obtaining credit by fraud, s. 13 of the Debtors Act, 1869, and that there is ample evidence to prove his fraudulent system. I shall be glad to know if you agree with this and for any law you may be able to quote. GIFFOLA.

Answer.

On the statement of the facts as given, it is doubtful whether any criminal offence has been committed and the lenders must rely on civil action for the recovery of their money. Our correspondent says that there has been no false pretence, and we do not think that obtaining a loan can be said to be "obtaining credit." It may be possible that charges of fraudulent conversion could be brought, but this would imply that the money was handed over for a specific purpose which the borrower did not fulfil. The fact that he appears to be somewhat unsuccessful in business does not necessarily mean that he is fraudulent.

3.—Criminal Law—*Suspected person—"Two distinct occasions."*

I should be grateful for your opinion on the following:

At 11.45 *p.m.* a uniformed patrol constable saw a man approach a parked motor car in the street and "try" the front and rear nearside door handles. Both doors were locked and he then made his way to a private car park, which is about 25 *yds.* away, in the same street, and "tried" the padlock securing the double wooden gates. He examined the lock and pushed the gates, but they did not open. This car park is adjacent to the footpath and is an enclosed piece of land, surrounded by three walls, approximately eight *ft.* high and a metal fencing, into which the double wooden gates are set.

The man then walked back to the car referred to above and "tried" the front and rear offside doors, which were locked. As the police officer moved to a better position, the man disappeared from his view. Approximately four minutes later the officer saw the man jump from one of the walls surrounding the private car park and run off. He was caught after a chase and when interviewed admitted that he had hoped to find cigarettes or money in the vehicles. He also admitted that whilst in the car park, and out of the view of the officer he had "tried" the door handles of two further vehicles, with the same intention.

The whole incident took place within five minutes. I am of the opinion that this man could have been arrested and charged with "Being a suspected person loitering with intent to commit felony, contrary to s. 4, Vagrancy Act, 1824." I appreciate the ruling in *Ledworth* v. *Roberts* [1936] 3 All E.R. 570; 101 J.P. 23, but again, in *Pyburn* v. *Hudson* [1950] 1 All E.R. 1006; 114 J.P. 287, the Lord Chief Justice implied that the length of time separating the two acts is not material, provided that there are two complete and distinct occasions.

I seek your opinion as to whether, (i) You consider that there were two distinct occasions on the facts stated to bring the man within the category of a suspected person? (ii) If the answer to (i) above is yes, whether you consider that the arrest and charge would still be justified had the man denied trying the doors of the locked vehicles in the car park, having regard to the fact that the officer did not witness his acts in the car park?

H. AHAM.

Answer.

(i) We think that there were two distinct occasions on these facts to bring the man within the category of a suspected person.

(ii) The arrest and charge would still be justified, since his previous behaviour led the officer to a reasonable inference of what he had been doing in the car park.

4.—Gaming—*Small Lotteries & Gaming Act*, 1956—*Registration of "Owner-Occupiers' Protection Association."*

I have received an application for registration under the above Act, from an owner-occupiers' protection association, wherein it is stated that the purposes for which the society is established and conducted are as follows:

"Protection of its members' interests both personal and financial when their properties are liable to be or are actually acquired by compulsory purchase order of the council."

I shall be glad to have your opinion as to whether such an application for registration should be effected. HORSA.

Answer.

The definition of "society" in s. 1 (4) of the Act is very wide and, until there has been a High Court ruling, it is difficult to be dogmatic. In this particular case, it might be that the "protection of the members' interests, both personal and financial" comes too close to private gain to allow the association's registration. On the other hand, the number of its members may be such that the protection afforded is far removed from the private gain contemplated by the Act. On the whole, with some hesitation, we think that this society could properly be registered.

5.—Landlord and Tenant—*Rent Act*, 1957—*Certificate of disrepair—Agreement between landlord and tenant too late to take effect.*

Application has been made by a tenant to the local authority for the issue of a certificate of disrepair pursuant to para. 4 (1) of part II of sch. 1 to the above Act. The local authority have served notice on the landlord pursuant to para. 5 of the said schedule. The landlord has notified the local authority that he has reached an agreement with the tenant—presumably that only some

of the repairs are to be carried out and the rent will be increased to some figure below the rent limit.

Paragraph 4 (1) of the schedule enables the tenant to waive in writing the carrying out of some of the repairs. This has not been done in this particular case, but if it had been done presumably the rent limit would still apply. It seems that there is no statutory provision for an agreement on the lines indicated and that, not having received an appropriate undertaking from the landlord, the local authority are bound to issue a certificate of disrepair if they are satisfied under para. 4 (2) that any of the defects specified in the tenant's notice to the local authority ought reasonably to be remedied. Do you agree?

ERNIE.

Answer.

We agree.

6.—Legitimacy—*Child born in India of British parents—Subsequent marriage of parents.*

Would you agree that a child born in the following circumstances should be treated in England as legitimated by the Legitimacy Act, 1926, as amended: a child born in India in 1944 to a single woman, a British subject, who subsequently married the father, a single man, a British subject, who was serving under the Crown, but domiciled in England? The marriage was in India in 1945. The mother, the father and the child are all now domiciled and resident in England.

F. ANDOR.

Answer.

It seems that, so far as English law is concerned, the child is legitimated by s. 1 (1) of the Legitimacy Act, 1926.

7.—Licensing—*Off-licence—Variation of terms of written undertaking given when licence granted.*

I would refer to P.P. 11 at 117 J.P.N. 420.

There are in the division for which I act as clerk, a number of "off licences" many of very long standing, which have been granted subject to undertakings either (*a*) to sell only medicated wines, or (*b*) not to open on Sundays.

From time to time in the past, licence holders have applied for the release of the undertakings limiting their sales to medicated wines, and my licensing justices have always taken the view that they should apply for a new licence, and undertake to surrender the existing licence if the new one is granted.

The solicitors for some of these licence holders have objected that, in point of fact, they are being made to apply for a new licence exactly similar to their existing licence, and that this is not only unnecessary, but wrong, in view of the decisions of *R.* v. *Taylor*; *R.* v. *Amendt* (1915) 79 J.P. 332.

I have, however, managed to get them to agree that the licences were not similar, and that one was, in fact, restricted (even if only by the undertaking) and the other was "full."

I have now received notification that the holder of an off-licence which is subject to an undertaking not to sell on Sundays, desires to apply for the removal of this undertaking, and the same arguments are being presented, namely, that it is wrong and unnecessary to apply for a new licence, and that the matter can be dealt with by a straight forward application for the release of the undertaking.

The argument now adduced is that there is no direct penal sanction against the holder of the off-licence if he breaks the undertaking, and that all that can happen to him is that the licensing justices might refuse to renew his licence because of his breach of the undertaking. Why should it be necessary therefore for him to have to go through all the procedure of applying for a new licence instead of simply going to the licensing justices and saying in effect "will you raise any objection to the renewal of my licence if I break the undertaking."

I should be glad to have your views as to how these applications should be dealt with.

I note that you said in answer to the P.P. quoted above, that there was no reason why the licence-holder should not apply for a new off-licence in place of the current off-licence.

Is it correct to say, therefore:

1. That there is no objection, in law, to an application for a licence which will be similar to the existing licence except for the extra legal undertaking.

2. That the licensing justices can insist on such an application being made by way of application for a new licence, and refuse to entertain an application made in any other way.

3. That, as suggested in your P.P. quoted above, because of the confirmation of the original licence (with its undertaking) by the confirming authority, a simple application to the licensing justices only, for the removal of the undertaking would not be correct, because it would amend the licence as considered by the confirming authority without any reference to them.

NAMTO.

Answer.

Supplementary to our answer in our vol. 117 at p. 420:

1. There is no legal objection: in our opinion the decision in *R.* v. *Taylor*; *R.* v. *Amendt* (1915) 79 J.P. 332 was decided on the particular facts then being considered and is not relevant in the case in point.

2. In our opinion, the licensing justices can so insist by reference to a proper principle that they regard a grant of an unrestricted licence as a matter in which licensing law gives the confirming authority an interest.

3. In the absence of guidance in any decision of the High Court, we hesitate to go so far as saying that a simple application to licensing justices for permission to waive the undertaking would *not be correct*. Much would depend on the wording of the undertaking.

8.—Licensing—*Special order of exemption—No exemption from conditions attaching to applicant's on-licence.*

AB is the holder of a full licence for a café in this district, subject to condition that intoxicating liquor is served only with meals.

The following endorsements are typed on the back of the licence:—

CONDITIONS

1. £105 monpoly value for the term of 3¼ years shall be payable as follows:—

£35 on taking out the first excise licence.
£35 on October 1, 1958, and
£35 on October 1, 1959.

2. There shall be no bar on the licensed premises.

3. No intoxicating liquor shall be sold for consumption off the premises.

4. Intoxicating liquor shall be sold or supplied only to persons partaking of a *bona fide* meal costing not less than 4*s.* excluding the cost of the intoxicating liquor, and to persons attending organized dinners or other similar special functions at which a *bona fide* meal is served costing not less than 4*s.* (exclusive as aforesaid).

AB has also a proprietary club attached to the premises. The club members are promoting a dinner dance to be held in a licensed room of the café premises. AB is closing the club entirely for the evening and will sell his own intoxicating liquor at the dinner.

The room will have to be cleared of the tables after the meal for the dance to take place in the same room.

AB intends to apply for an extension to sell intoxicating liquor during the whole time the dance is in operation, *i.e.*, to 1 *a.m.* He is in order supplying the liquor while the meal is in progress but I should be very pleased if you could inform me whether there is anything against the granting of the extension with this licence. In an adjoining district, a similar licence holder supplies the liquor for the meal but has been advised that only a full licence holder without conditions can apply for an occasional licence in place of any extension applied for by himself. This procedure he has carried out with the full approval of the justices.

Could you inform me which is the correct procedure, please?

NERBUR.

Answer.

A special order of exemption granted to the licence holder under s. 107 of the Licensing Act, 1953, does no more than exempt from the provisions relating to permitted hours on a special occasion: the order provides no manner of exemption from conditions attaching to the justices' on-licence.

Our correspondent's question turns on the construction of a phrase in Condition No. 4—"persons attending organized dinners or other similar special functions at which a *bona fide* meal is served costing not less than 4*s.*" Is a "dinner and dance" a similar function to an "organized dinner"? We think that it might be so regarded; the more so if nobody who was not at the dinner is permitted to attend the dance. In any event, no bar for the convenience of the dancers may be set up by the licence holder.

The practice in the district adjoining that of our correspondent was approved by the High Court in *Brown* v. *Drew* (1953) 117 J.P. 435.

9.—Probation Order—*Breach of requirement—Notification of local authority.*

I should be glad to have your opinion as to whether under the provisions of s. 35 of the Children and Young Persons Act, 1933,

there is an obligation upon the probation officer to formally notify the local authority (in this case the children's officer for the county) when action is being taken under s. 6 of the Criminal Justice Act, 1948, to bring a child or young person before the court for a breach of one of the conditions of the probation order. I would say that in this county the investigation and home surroundings inquiry are made by the probation officers and the school reports are presented to the courts by the probation officer as an agent on behalf of the local authority. QUERN.

Answer.

We are of opinion that there is no obligation upon the probation officer to notify the local authority under s. 35 of the Children and Young Persons Act, 1933, but suggest that he might well do this in the circumstances (unless it has been done by the chief officer of police) having regard to the duty of the local authority to render available to the court, in proper cases, information as to available approved schools.

10.—Public Health Act, 1936—*Plan approved under byelaws—Work begun but not completed—Must builder continue?*

Under the Public Health Act, 1936, and the building byelaws which have been approved and confirmed, my council approved the plans for a builder's yard and builder's office to be constructed. The building has been begun but has not been completed, and it cannot be used for any purpose. The builder is not proposing to proceed with the construction and contends that the council have no powers to compel him to build the same under the byelaws, and that if he so desires he may take as long as he likes, having regard to the fact that he has begun the work which was approved under the byelaws. It would be interesting to know whether the local authority has any power to compel the completion of the works under the building byelaws, and references to any material cases would be most useful. DAILSE.

Answer.

The builder is substantially right: *see* s. 66 of the Public Health Act, 1936.

11.—Road Traffic Acts—*Construction and Use Regulations—Unattended vehicle with brake not set—Vehicle left off the road but running on to it—Does reg.* 91 *apply?*

A public house lies about 40 *yds.* back from a main road. The area between the road and the front of the public house forms a rather large car park and on one side of the car park is other land belonging to the owners of the public house, but not surfaced to form part of the car park. A motorist left his car on the other land and whilst it was unattended it ran forward across the main road and collided with, and caused considerable damage to, petrol pumps which form part of a filling station on the opposite side of the main road.

I am in some doubt as to whether an offence is committed under reg. 91, of the Construction and Use Regulations, 1955, because this says, "No person shall cause or permit to be *on a road* any motor vehicle, etc." I do not think the ground adjacent to the car park can be deemed to be a road within the meaning of these regulations. Your views would be appreciated. MUFFIN.

Answer.

It seems clear that this vehicle was in fact on the road in question with no person attending it and with the brake not effectually set. *Prima facie*, on the facts as stated, the only reason for this was that it was left by the motorist on the land adjoining the car park with the brake not set. In our view on these facts the motorist did cause or permit the vehicle to be on the road in contravention of reg. 91.

12.—Road Traffic Acts—*Traffic signs—Placed in exercise of powers under s.* 38 *of the Act of* 1956*—Failure to comply with such signs.*

A conference of police officers recently discussed the question of enforcement of observance of the requirements of signs authorized to be placed by the police in accordance with s. 38 of the Road Traffic Act, 1956. Doubt has been expressed as to whether there is any legal requirement that the driver of a vehicle shall comply with the indication given by such signs.

It has been argued as follows:

Regulation 23 (1) (*b*) of the Traffic Signs Regulations and General Directions, 1957; the Road Traffic Act, 1956, s. 38; and the Road Traffic Act, 1930, s. 48, together authorize the police to place on any highway any temporary sign indicating a prohibition, restriction or requirement, to prevent or mitigate congestion or obstruction of traffic in consequence of extraordinary circumstances. Regulation 5 of the Traffic Signs Regulations and General Directions, 1957, limits the application of s. 49 of the Road Traffic Act, 1930, to a specified number of mandatory signs which does not include the temporary traffic signs referred to. It appeared, therefore, that although the police are authorized to erect temporary mandatory traffic signs to deal with extraordinary circumstances, there is no legal requirement for any driver to comply with any such sign.

I do not agree with this view. It appears to me that reg. 5 of the Traffic Signs Regulations and General Directions, 1957, applies s. 49 of the Road Traffic Act, 1930, to certain mandatory signs referred to in those Regulations and that the temporary signs authorized by s. 38 of the Road Traffic Act, 1956, have s. 49 of the Road Traffic Act, 1930, applied to them by s. 35 of the Road Traffic Act, 1956. Section 35 (7) of the Road Traffic Act, 1956, provides as follows: the words "being a sign for regulating the movement of traffic and being" in s. 49 of the 1930 Act, are to cease to have effect, but it is provided that, *for the purposes of s.* 49 a traffic sign shall not be treated as having been lawfully placed unless *either*

(*a*) the indication given by the sign is an indication of a statutory prohibition, restriction, or requirement,

(*b*) *The sign has been placed in exercise of the powers conferred by s.* 38 *of the* 1956 *Act* (which authorizes certain temporary signs for dealing with traffic congestion or danger), or

(*c*) it is expressly provided by the regulations under s. 48 of the Act of 1930 prescribing the type of sign in question, or the authorization under that section authorizing the erection or retention of that particular sign, that s. 49 aforesaid shall apply to signs of that type or, as the case may be, that particular sign.

I contend, therefore, that temporary signs which are authorized to be placed by the police in exercise of the powers conferred by s. 38 of the 1956 Act and which comply with the requirements of reg. 23 of the Traffic Signs Regulations and General Directions, 1957, are lawfully placed for the purposes of s. 49 of the 1930 Act as provided in s. 35 (7) of the 1956 Act. KATA.

Answer.

Section 35 (7) (*b*) of the Act of 1956 refers expressly to signs placed in the exercise of powers conferred by s. 38 of that Act. It is because of the provisions of s. 35 (7) (*c*) that reg. 5 of the 1957 Regulations has been made. We think that failure to comply with a prescribed sign lawfully placed in pursuance of s. 38 of the Act of 1956 is an offence against s. 49 of the Act of 1930.